

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
Inner Circle 1420)	
t/a Lotus)	
)	Case Nos. 11-251-00204, 11-251-00216,
Holder of a Retailer's)	11-251-00228, 11-251-255, &
Class CN License)	11-251-257
at premises)	License No. ABRA-075162
1420 K Street, N.W.)	Order No. 2011-407
Washington, D.C)	
)	
Respondent)	

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ALSO PRESENT: Lt. William Fitzgerald, Metropolitan Police Department, 1D

Emanuel Mpras, Esq., on behalf of the Respondent

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER ON FACT FINDING

On August 17, 2011, Inner Circle 1420, t/a Lotus, holder of a Retailer's Class CN license, located at 1420 K Street, N.W., Washington, D.C., came before the Alcoholic Beverage Control Board (Board) for a Fact Finding Hearing. *See* Alcoholic Beverage Regulation Administration (ABRA) Fact Finding File ABRA-075162.

The Board held the Fact Finding Hearing on five investigative reports based on Metropolitan Police Department for the District of Columbia (MPD) PD 251 reports and ABRA Enforcement Division investigations. *See* ABRA Investigative Report Numbers 11-251-00204, 11-251-00216, 11-251-00228, 11-251-00255 and 11-251-257. Several of these incidents involved physical altercations resulting in serious injuries over multiple weekends and it was for this reason, the Board held a Fact Finding Hearing.

At the conclusion of the Fact Finding Hearing, the Board set forth several requirements based on the following:

FINDINGS OF FACT

1. Inner Circle 1420, t/a Lotus (Respondent), is the holder of a Retailer's Class CN license, located at 1420 K Street, N.W., Washington, D.C.
2. The Respondent is the subject of five ABRA Enforcement Division investigations. See ABRA Investigative Report Numbers 11-251-00204, 11-251-00216, 11-251-00228, 11-251-00255 and 11-251-00257; Transcript, August 17, 2011 (*hereinafter Tr.*)
3. Present at the Fact Finding Hearing as witnesses were ABRA Investigators; Supervisory Investigator Jermaine Matthews, Investigator Tyrone Lawson and Investigator Jabriel Shakoor. *Tr.* 8/17/11 at 3. Also present on behalf of the Metropolitan Police Department (MPD) were Lt. William Fitzgerald, First District Detective, and Officer Phillip McHugh. *Tr.* 8/17/11 at 3.
4. The Board proceeded with the hearing by taking one investigative report at a time. *Tr.* 8/17/11 at 5. Investigator Matthews summarized investigative report No. 11-251-00228. *Tr.* 8/17/11 at 5. He described the July 8, 2011 incident as a physical altercation that occurred at the Respondent's establishment. *Tr.* 8/17/11 at 5. The investigation was undertaken as a result of a call from the Mayor's Call Center. *Tr.* 8/17/11 at 6.
5. Investigator Matthews spoke to MPD Officer Spears who stated that a male and female tried to gain entry into the establishment, but the Respondent was closed. *Tr.* 8/17/11 at 6. Officer Spears stated that another group of four people also tried to gain entry but were turned away. *Tr.* 8/17/11 at 6. The group of four people then attacked the male and female. *Tr.* 8/17/11 at 6. The female was punched in the face and male was hit in the head with a brick. *Tr.* 8/17/11 at 7. Officer Spears informed Investigator Matthews that the attack took place outside the establishment. *Tr.* 8/17/11 at 7.
6. Investigator Matthews stated that the injured female was identified as Alesandro Tolado. *Tr.* 8/17/11 at 7. Ms. Tolado told Investigator Matthews that she and her male companion had just left Lima, another neighborhood ABC-licensed establishment, and were returning to Lotus to retrieve their vehicle from the valet service. *Tr.* 8/17/11 at 7. She stated that she was talking to two females when she was attacked. *Tr.* 8/17/11 at 7.
7. Investigator Matthews and MPD Captain West viewed the videotape of the incident. *Tr.* 8/17/11 at 7. They observed that the victims tried to gain entry into the establishment but were denied by the Respondent's security personnel. *Tr.* 8/17/11 at 7-8.
8. Investigator Matthews also interviewed one of the Respondent's security personnel, Jose Canales, who stated that a group of four males were denied entry because the Respondent was closing for the night. *Tr.* 8/17/11 at 8. Mr. Canales stated that the Respondent's management instructed him to take this action. *Tr.* 8/17/11 at 8. Mr. Canales told Investigator Matthews that the group of four males was angry that security permitted promoters to re-enter the establishment. *Tr.* 8/17/11 at 9. The group of males

began to insult the Respondent's security personnel. *Tr.* 8/17/11 at 9. According to Mr. Canales, the group of males also turned their attention and verbal insults to the male and female who were attempting to retrieve their car from the valet service. *Tr.* 8/17/11 at 9, 12-13. The group of males then attacked the male and female. *Tr.* 8/17/11 at 9-10.

9. Investigator Matthews testified that it was his impression that the Respondent was aware that the altercation was taking place between the group of males, and the male and female victims. *Tr.* 8/17/11 at 12. Investigator Matthews also believes that Mr. Canales was aware of the attack. *Tr.* 8/17/11 at 13.

10. Lt. Fitzgerald testified that the male victim suffered internal bleeding of the brain, multiple facial fractures and a deep laceration as a result of the attack. *Tr.* 8/17/11 at 10. The male victim spent several days at The George Washington University Hospital, some of that time in intensive care. *Tr.* 8/17/11 at 10. Lt. Fitzgerald stated that the Respondent did not provide MPD videotape of this incident. *Tr.* 8/17/11 at 10. Lt. Fitzgerald believes that the female victim, and not the Respondent, called MPD. *Tr.* 8/17/11 at 13. The suspect was stopped a block from the establishment and charge with simple assault for the attack on the female victim. *Tr.* 8/17/11 at 13. The charges were later upgraded to felony assault due to the use of the brick in the attack on the male victim. *Tr.* 8/17/11 at 14.

11. David McLeod, General Manager and head of the Respondent's security team, testified that he spoke to Mr. Canales who informed him that he saw the group of four males when he was shutting down the club, but that the group left. *Tr.* 8/17/11 at 16. Mr. Canales told Mr. McLeod that when he opened the door for the promoters, he saw the male victim lying on the ground with a brick near his head. *Tr.* 8/17/11 at 16. He stated that Mr. Canales did not call MPD because MPD was already on the scene. *Tr.* 8/17/11 at 16-17.

12. Investigator Shakoor then testified on Investigative Report No. 11-251-00255; an incident that occurred on July 23, 2011, involving a large fight inside the establishment. *Tr.* 8/17/11 at 18. He stated that he responded to Lotus when he received a phone call from MPD on the ABRA hotline. *Tr.* 8/17/11 at 18. Two patrons were sent to The George Washington University Hospital after being struck by a bottle while inside the establishment. *Tr.* 8/17/11 at 19.

13. Investigator Shakoor testified that he interviewed MPD Detective McFadden who stated that while inside the establishment, a male patron was struck with a bottle of alcohol. *Tr.* 8/17/11 at 19 *Tr.* 8/17/11 at 19 *Tr.* 8/17/11 at 3. The Detective indicated that an Asian male patron was engaged in a verbal altercation with a black male patron. *Tr.* 8/17/11 at 19. The Asian patron threw a bottle at the black patron, striking him in the head. *Tr.* 8/17/11 at 19. Detective McFadden further stated that a female patron was also injured by shards of glass from the thrown bottle of alcohol. *Tr.* 8/17/11 at 19, 31. Both victims were taken to the hospital for treatment of their wounds. *Tr.* 8/17/11 at 19.

14. As a part of the investigation for this incident, Investigator Shakoor interviewed David McLeod who stated that at approximately 2:34 a.m., a patron was struck in the head with a bottle. *Tr.* 8/17/11 at 20. Mr. McLeod informed Investigator Shakoor that once security personnel became aware of the incident, they intervened and attempted to gain control of the situation. *Tr.* 8/17/11 at 20. The parties were separated and the victim was

taken to the hallway where aid was rendered. *Tr.* 8/17/11 at 20. Mr. McLeod also stated that MPD was notified and the parties were escorted out separate exits. *Tr.* 8/17/11 at 20.

15. Investigator Shakoor interviewed the male victim, Mr. Grey-Coker regarding the incident. *Tr.* 8/17/11 at 20. Mr. Grey-Coker stated that he was approached by an Asian male who pushed him and grabbed his shirt for no reason. *Tr.* 8/17/11 at 20. He was hit in the head with a bottle and then he exited the establishment by walking out with a female patron. *Tr.* 8/17/11 at 21. Mr. Grey-Coker stated that he is a frequent visitor to Lotus and he did not recognize any of the Asian patrons there that night. *Tr.* 8/17/11 at 21.

16. Lt. Fitzgerald testified that it was Detective Andre Williams, and not Det. McFadden on the scene that night. *Tr.* 8/17/11 at 21. Lt. Fitzgerald testified that in addition to the male and female patrons who were struck with the bottle of alcohol, there was a third patron who was also taken to the hospital. *Tr.* 8/17/11 at 22, 32. Det. Williams informed Lt. Fitzgerald that the establishment's video footage shows the Asian male throwing the bottle at the black male victim. *Tr.* 8/17/11 at 22, 32. The bottle bounces off of his head and strikes the female patron, knocking her unconscious. *Tr.* 8/17/11 at 22.

17. Lt. Fitzgerald stated that after the female patron was struck, a melee broke out inside the establishment. *Tr.* 8/17/11 at 22, 34. That is when the third patron was injured by thrown bottles, and subsequently taken to the hospital by his friends. *Tr.* 8/17/11 at 23. Lt. Fitzgerald testified that the parties, were not, in fact separated; instead the establishment shut down and the patrons were forced outside onto the street. *Tr.* 8/17/11 at 23, 33. He stated that the Respondent threw on the lights and encouraged patrons to leave. *Tr.* 8/17/11 at 25, 33.

18. He stated that MPD arrived on the scene ten minutes after the fight broke out and the patrons were still fighting outside the establishment and into the alley. *Tr.* 8/17/11 at 23. Lt. Fitzgerald described the incident as very serious due to the fighting patrons spilling out onto the street and alleyway. *Tr.* 8/17/11 at 23-24. He also noted that two of the three victims were knocked unconscious and were admitted overnight in the hospital due to the seriousness of their injuries. *Tr.* 8/17/11 at 24. Lt. Fitzgerald testified that he viewed a small portion of the video surveillance footage captured by the inside cameras. *Tr.* 8/17/11 at 24.

19. Officer McHugh testified that he observed patrons exiting the establishment with bottles and that bottles were being thrown outside in front of the establishment. *Tr.* 8/17/11 at 26-27. He stated that he was one of the first officers to arrive on the scene. *Tr.* 8/17/11 at 26. He observed about 100 persons outside and many more patrons were coming up the stairs from the basement of the establishment. *Tr.* 8/17/11 at 26. He stated that it took 15 to 20 minutes to get the situation under control as it was quite chaotic. *Tr.* 8/17/11 at 26-27.

20. Officer McHugh testified that he saw the injured female located in the lobby of the office building next door. *Tr.* 8/17/11 at 26, 30, 34-35. The female victim was seizing severely and bleeding from her injuries. *Tr.* 8/17/11 at 26. Officer McHugh stated that no one from the Respondent's staff was assisting the female victim at this time, and MPD did not know how she arrived in the lobby. *Tr.* 8/17/11 at 35. The front doors of the lobby

were locked so the victim could not have entered the establishment from the outside. *Tr.* 8/17/11 at 37-38. The female victim's friends let MPD inside. *Tr.* 8/17/11 at 38, 44. Officer McHugh stated that MPD called for an ambulance and that he and Sergeant Evans carried the victim, who was unconscious at the time, from the lobby to the ambulance. *Tr.* 8/17/11 at 26, 37. He did not ask the victim how she arrived in the lobby because she was unconscious and seizing *Tr.* 8/17/11 at 43.

21. Officer McHugh was not certain, but he believed that the Respondent had engaged two officers under the MPD Reimbursable Detail program for that night and that Sergeant Evans was part of that detail. *Tr.* 8/17/11 at 28-29. Officer McHugh also stated that it is common MPD practice that when the Respondent starts closing, available MPD officers head to the establishment because they presume that there will be an incident of some kind. *Tr.* 8/17/11 at 30.

22. Investigator Lawson testified that the establishment has an interior elevator that opens into the lobby of the building next door. *Tr.* 8/17/11 at 41.

23. Investigator Shakoor testified that the establishment did not act contrary to the requirements of their security plan. *Tr.* 8/17/11 at 44. He stated that the Respondent safely evacuated its patrons from the building and could not have done anything better to prevent the melee. *Tr.* 8/17/11 at 44, 50-51. He further stated that security attempted to get the situation under control and patrons were leaving on their own accord. *Tr.* 8/17/11 at 45. He believes that the situation would only have escalated had the Respondent tried to contain the patrons inside the establishment. *Tr.* 8/17/11 at 45. Investigator Shakoor stated that the Respondent was doing its best to separate and protect the Asian group from other patrons. *Tr.* 8/17/11 at 46.

24. Mr. McLeod testified that the Respondent did have a MPD Reimbursable Detail of two officers that night. *Tr.* 8/17/11 at 46. He stated that the video footage shows his security detail escorting the first male victim up the steps and into the hands of MPD. *Tr.* 8/17/11 at 47-48. He stated that it was the MPD Reimbursable Detail that called for back-up of additional officers. *Tr.* 8/17/11 at 47. Mr. McLeod also stated that the video footage shows his security personnel escorting the injured female victim through the club, up the steps and out the front door. *Tr.* 8/17/11 at 47. He further stated that the front camera does not show any bottles being removed from the establishment. *Tr.* 8/17/11 at 47-48. Mr. McLeod stated that he reviewed the video footage with Investigator Shakoor and then burned a copy of the footage for him. *Tr.* 8/17/11 at 48.

25. Mr. McLeod stated that he manages the establishment "by the book" and that there were no bottles outside the establishment and the female victim was not left alone in the lobby. *Tr.* 8/17/11 at 49, 51. He testified that the footage demonstrates that the victim was escorted by personnel directly to the detail or ambulance out front. *Tr.* 8/17/11 at 47, 52. He stated that the detail officers never entered the establishment. *Tr.* 8/17/11 at 50.

26. Investigator Shakoor testified that he could not attest to the fact that either the perpetrator or the victim was escorted out of the establishment. *Tr.* 8/17/11 at 53, 57-58. Nor could he identify the female victim who was rendered unconscious from the thrown bottle. *Tr.* 8/17/11 at 53. Investigator Shakoor could not corroborate what Mr. McLeod stated is demonstrated on the security footage. *Tr.* 8/17/11 at 54. He stated that when he

spoke with the male victim, the male victim informed Investigator Shakoor that he walked out the front door with the aid of a female. *Tr.* 8/17/11 at 54-55. Investigator Shakoor stated that he never contacted the third victim because the victim was not listed on the MPD 251 report. *Tr.* 8/17/11 at 56.

27. Mr. McLeod stated that he was testifying regarding the exterior camera located on the front door and Investigator Shakoor was testifying as to the view from the interior camera. *Tr.* 8/17/11 at 57. Investigator Shakoor stated that he never received the view of the security camera footage from the front door that Mr. McLeod described. *Tr.* 8/17/11 at 59. He only received the camera view from inside the establishment. *Tr.* 8/17/11 at 60.

28. Officer McHugh testified that the female patron located in the lobby was Asian. *Tr.* 8/17/11 at 60, 62. He stated that her friends initially thought she had been stabbed because there were cut wounds on her body. *Tr.* 8/17/11 at 61. It was later determined that she had been hit by the bottle that ricocheted from the male victim's head. *Tr.* 8/17/11 at 61-62. Officer McHugh testified that he and Sergeant Evans carried the Asian female from the lobby to the ambulance. *Tr.* 8/17/11 at 64. He further stated that this first came to MPD's attention as a result of the male victim who was bleeding profusely from the head and required an ambulance. *Tr.* 8/17/11 at 62.

29. Mr. McLeod testified that the camera footage will demonstrate that the Asian woman was carried to the ambulance by her friends. *Tr.* 8/17/11 at 63. He stated that she was carried from the Lotus Room, through the club, up the steps and out the front door. *Tr.* 8/17/11 at 65. He further stated that this scene is captured on the security camera footage. *Tr.* 8/17/11 at 65-66. Mr. McLeod testified that he was unaware that the Asian woman's friends had carried her outside to the ambulance or that she had been hit with a bottle. *Tr.* 8/17/11 at 67-68.

30. Investigator Shakoor then testified on Case No. 11-251-00257 regarding an incident that occurred on July 4, 2011. *Tr.* 8/17/11 at 69. He stated that he responded to a phone call from MPD regarding a large fight taking place outside the establishment. *Tr.* 8/17/11 at 69. He said that he received a call from Lt. Kenneth Hargrove who stated that a large fight started inside the establishment and that additional officers were called to the scene due to over 100 people fighting outside the establishment. *Tr.* 8/17/11 at 69-70. Lt. Hargrove informed Investigator Shakoor that the crowd began fighting the police. *Tr.* 8/17/11 at 70. Lt. Hargrove said that four arrests were made and no complaints were recorded. *Tr.* 8/17/11 at 70.

31. Investigator Shakoor testified that Lotus hosted a self-promoted event, All White Day Party, for July 4, 2011. *Tr.* 8/17/11 at 70. He stated that Mr. McLeod said that two family members were engaged in a verbal altercation that escalated, so the establishment terminated the event, called MPD and sent the patrons outside. *Tr.* 8/17/11 at 70. Mr. McLeod informed Investigator Shakoor that as the patrons exited, the fight broke out again and then as the police arrived, the patrons started fighting the police. *Tr.* 8/17/11 at 70. There was no video footage of the incident because MPD had confiscated the surveillance system as a result of the previous incident. *Tr.* 8/17/11 at 71.

32. Officer McHugh testified that he received a call at about 2:25 a.m. for a large fight outside Lotus. *Tr.* 8/17/11 at 71, 87. He stated that he was two blocks away and was the

first officer to arrive on the scene. *Tr.* 8/17/11 at 71. When he pulled up, he witnessed a large group fighting with their fists and a mass exodus of patrons running up the steps to exit the establishment. *Tr.* 8/17/11 at 71-72.

33. Officer McHugh testified that he called for back-up because the scene was utter chaos and he was concerned for his own safety. *Tr.* 8/17/11 at 72, 74, 79. He stated that MPD had to issue a District-wide 1033 which requires every officer on duty to report to the scene. *Tr.* 8/17/11 at 72. He further stated that the establishment is located in Sector 1 and every unit from Sector 2 reported to the fight. *Tr.* 8/17/11 at 72. Every crime suppression team arrived on the scene as well. *Tr.* 8/17/11 at 72. Officers from MPD's Third District which is the geographical district located to the north of the establishment, also came to assist. *Tr.* 8/17/11 at 73.

34. Officer McHugh testified that MPD's primary objective was to get everybody dispersed. *Tr.* 8/17/11 at 73. He saw one patron run over by a car and another patron thrown to the ground. *Tr.* 8/17/11 at 73. He stated that cars were speeding out of the parking garage and the alley, so MPD shut down the street in both directions. *Tr.* 8/17/11 at 73. He stated that MPD brought patrol wagons to contain people who were out of control. *Tr.* 8/17/11 at 73. He further stated that it was the most chaotic scene he has witnessed since he has been assigned to the streets as an MPD officer. *Tr.* 8/17/11 at 73.

35. Officer McHugh testified that he made two of the four arrests that evening. *Tr.* 8/17/11 at 73. He said that every officer present had a baton in one hand and pepper spray in the other. *Tr.* 8/17/11 at 74. He said that every MPD Watch Commander was on the scene as well as every MPS Sergeant, simply trying to separate people and pull them off of one another. *Tr.* 8/17/11 at 74. Officer McHugh stated that there were no officers detailed to the establishment. *Tr.* 8/17/11 at 75.

36. Officer McHugh testified that there were 50 to 60 officers on the scene that night and that it took MPD 25 minutes to get the incident under control. *Tr.* 8/17/11 at 75. There were several ambulances on site but most people refused treatment. *Tr.* 8/17/11 at 75. He is not aware how many people went to the hospital under their own volition. *Tr.* 8/17/11 at 75. He further stated that there were no documented assaults (suspect and victim) but there were a number of disorderly affrays (two combatants). *Tr.* 8/17/11 at 76. MPD was also unable to identify who the primary aggressor was or what started the fight. *Tr.* 8/17/11 at 76.

37. Officer McHugh stated that he smelled pepper spray and witnessed people being treated for injuries consistent with the use of pepper spray, but that no MPD officer used pepper spray during the melee. *Tr.* 8/17/11 at 77, 80. He testified that there was no documented use of force on the part of MPD, and he can only assume that if pepper spray was used, it came from another patron or the establishment's security. *Tr.* 8/17/11 at 77.

38. Investigator Shakoor testified that he arrived on the scene after the fight was under control. *Tr.* 8/17/11 at 78. He stated that there were still a number of MPD officers on the scene. *Tr.* 8/17/11 at 78. Investigator Shakoor stated that he did not interview anybody, he did not detect any pepper spray odor, nor did he enter the establishment. *Tr.* 8/17/11 at 79.

39. Mr. McLeod testified that he did not witness the use of pepper spray nor did he smell anything such as pepper spray. *Tr.* 8/17/11 at 81. He also stated that none of his staff was involved in the altercation. *Tr.* 8/17/11 at 81. He stated that the fight started between two brothers and that's when security personnel escorted them outside. *Tr.* 8/17/11 at 82. Mr. McLeod stated he radioed his security staff and asked one of them to call 911. *Tr.* 8/17/11 at 83-85. He does not know who called 911. *Tr.* 8/17/11 at 85. He also said that MPD was already present when security went outside. *Tr.* 8/17/11 at 85-86.

40. Mr. McLeod testified that normally, the establishment has MPD Reimbursable Detail but that night, there was none. *Tr.* 8/17/11 at 87.

41. Investigator Lawson testified next regarding investigative reports Nos. 11-251-00204 and 11-251-00216 regarding an incident that occurred on June 10, 2011. Investigator Lawson stated that the two investigative reports were based on MPD 251 Report No. 11081796, involving an assault on a police officer on June 10, 2011. *Tr.* 8/17/11 at 89. He stated that he made a determination that the establishment did not follow its security plan and failed to follow proper procedures following the physical altercation. *Tr.* 8/17/11 at 89.

42. Investigator Lawson testified that he received a copy of the Search and Seizure Warrant issued by the Superior Court of the District of Columbia for MPD to have authority to seize the establishment's digital recording system, security log sheet and hard drive. *Tr.* 8/17/11 at 89.

43. Investigator Lawson stated that he reviewed the Respondent's Security Plan regarding the use of force and the proper handling of unusual incidents. *Tr.* 8/17/11 at 91. He also interviewed Mr. McLeod who stated that the assault on a police officer occurred after the felony assault incident (No. 11-251-00216). Mr. McLeod informed Investigator Lawson that a patron named Brandon Coates approached a security staff person from behind and hit him in the right shoulder with a closed fist. *Tr.* 8/17/11 at 91. Mr. Coates then walked from the establishment to the middle of K Street, N.W., and struck MPD Officer Miller in the face with a closed fist. *Tr.* 8/17/11 at 91. Officer Miller then arrested Mr. Coates, who appeared intoxicated at the time of his arrest. *Tr.* 8/17/11 at 90-91, 113.

44. Investigator Lawson testified that he interviewed Vincent Wheaton, a member of the Respondent's security personnel. *Tr.* 8/17/11 at 92. Mr. Wheaton informed Investigator Lawson that he did not recall hitting or kicking anyone, but that he was struck by someone in the back shoulder area. *Tr.* 8/17/11 at 92. When Mr. Wheaton turned around to confront the assailant, he noticed that the man had walked to the middle of K Street, N.W. and struck Officer Miller in the face. *Tr.* 8/17/11 at 92. After Officer Miller arrested the suspect, Mr. Wheaton went inside the establishment with other members of the security personnel team. *Tr.* 8/17/11 at 93.

45. Investigator Lawson testified that he viewed the camera video footage for that day and he also reviewed a copy of the incident report for the assault on the police officer. *Tr.* 8/17/11 at 93.¹ The video shows Mr. Coates being thrown to the ground by an off-duty

¹ The Board watched the video footage of the June 10, 2011, incident as Investigator Lawson narrated what was taking place on the wall screen. *Tr.* 8/17/11 at 94-112].

police officer and kicked and punched by the establishment's security personnel. *Tr.* 8/17/11 at 94-96, 101-102. There was also another patron who was kicked by security and who suffered brain injuries. *Tr.* 8/17/11 at 96.

46. Lt. Fitzgerald stated that several off-duty police officers were involved in the assault. *Tr.* 8/17/11 at 105-106. He said that the individual who was knocked to the ground, Mr. Harris, lost his eyesight in his right eye. *Tr.* 8/17/11 at 106, 113. He further stated that Mr. Harris never received medical treatment at the scene of the incident; instead his father took him to Prince George County Hospital for treatment. *Tr.* 8/17/11 at 114. The injury to Mr. Harris' eye was so severe, he lost his sight. *Tr.* 8/17/11 at 114.

47. Lt. Fitzgerald stated that a bald man depicted in the video hitting a patron, was a member of the Respondent's security team. *Tr.* 8/17/11 at 109-110. He also stated that another male patron was assisting a female who was caught in the initial melee and was pushed to the ground underneath the pile of individuals. *Tr.* 8/17/11 at 111.

48. Investigator Lawson testified that he determined that the Respondent's incident report did not include information that is required by the establishment's Security Plan. *Tr.* 8/17/11 at 112, 135-136, 140. He stated that the incident report was not a complete report of everything that happened. *Tr.* 8/17/11 at 112, 136-137. The incident report did not indicate whether anyone was arrested or what the police findings were. *Tr.* 8/17/11 at 113, 136.

49. Lt. Fitzgerald testified that when the investigation first launched, MPD requested a copy of the video footage and the Respondent provided about 15 minutes worth of footage. *Tr.* 8/17/11 at 115, 117-118. Not certain they received everything, MPD detectives then requested video footage of one hour preceding and following the incident. *Tr.* 8/17/11 at 115, 118. He stated that MPD requested the additional footage because at this point MPD was unaware that off-duty police officers were involved in the melee. *Tr.* 8/17/11 at 115. Mr. McLeod informed Lt. Fitzgerald that the old footage had been replaced by the new footage following a two week period. *Tr.* 8/17/11 at 115, 125. As a result, Lt. Fitzgerald directed his detectives to obtain a search warrant for the hard drive and the entire surveillance system. *Tr.* 8/17/11 at 115-116, 125.

50. Lt. Fitzgerald testified that as MPD was attempting to remove the camera and computer equipment, the owner, Michael Romeo, appeared. *Tr.* 8/17/11 at 116. It was then that they were able to obtain more footage which enabled MPD to more readily identify patrons, security personnel, and off-duty officers participating in the melee.² *Tr.* 8/17/11 at 116, 118.

51. Lt. Fitzgerald stated that there was a lack of cooperation on the part of the establishment. *Tr.* 8/17/11 at 117. MPD has never had to obtain a search warrant in order to get the requested video footage from an ABC-licensed establishment. *Tr.* 8/17/11 at 117, 125. He stated that Mr. Romeo contradicted what Mr. McLeod said about the video footage being taped over after two weeks and indicated that was not true. *Tr.* 8/17/11 at 117.

² The additional footage obtained by MPD is the footage viewed by the Board at the Fact Finding Hearing.

52. Lt. Fitzgerald stated that the melee appears to have begun outside the establishment as a result of a verbal altercation between two female patrons. *Tr.* 8/17/11 at 119.

53. Mr. McLeod stated that he gave MPD the exact video footage they requested, which was the footage of the fight. *Tr.* 8/17/11 at 120-122, 129. He stated that he always cooperates with MPD no matter what the video footage reveals. *Tr.* 8/17/11 at 121, 126, 158-159. He stated that he never hides the video from MPD. *Tr.* 8/17/11 at 121, 141. He further stated that MPD asked for more video footage only after they received the footage of the fight. *Tr.* 8/17/11 at 122-123.

54. It was upon MPD's return to the establishment that Mr. McLeod informed MPD that the additional footage had been taped over. *Tr.* 8/17/11 at 124. There was no footage regarding the timeframe of one hour after the incident provided to MPD. *Tr.* 8/17/11 at 124. Mr. McLeod stated that the video isn't always taped over because for major incidents, he will burn the video to a DVD for preservation. *Tr.* 8/17/11 at 127, 161. He said it would have been easy for him to burn the hour before and after the fight if he had known that's what MPD wanted originally. *Tr.* 8/17/11 at 127-128. He stated that the old system holds tape for about three weeks and the new system holds video for about 60 days. *Tr.* 8/17/11 at 130-131.

55. Lt. Fitzgerald stated that the incident occurred on June 10, 2011 and MPD requested the video footage on June 21, 2011. *Tr.* 8/17/11 at 132. MPD made a second request for additional footage on June 22, 2011, 12 days after the incident. *Tr.* 8/17/11 at 132-133. Mr. McLeod informed MPD that the video footage had already been taped over. *Tr.* 8/17/11 at 132. MPD served the search warrant on June 24, 2011. *Tr.* 8/17/11 at 133. Lt. Fitzgerald testified that the video footage showing an hour timeframe prior to the incident was obtained as a result of the search warrant. *Tr.* 8/17/11 at 133.

56. Lt. Fitzgerald testified that the search warrant also authorized MPD to seize employee records because MPD could not initially get the establishment to comply with the request for the names of the employees involved in the melee. *Tr.* 8/17/11 at 144. He stated that Mr. Romeo provided the names of the bouncers within an hour of MPD arriving with the warrant. *Tr.* 8/17/11 at 144-145.

57. Lt. Fitzgerald informed the Board that there are a lot of incidents that are of concern to MPD regarding public safety, especially when the establishment's staff joins in the assault. *Tr.* 8/17/11 at 148-149. He stated that there is also a concern when the establishment does not tend to injured patrons or patrons in need of assistance such as the woman pinned to the ground at the bottom of melee. *Tr.* 8/17/11 at 148-149.

58. Lt. Fitzgerald further stated that the biggest concern held by MPD is the lack of cooperation from the establishment. *Tr.* 8/17/11 at 149, 154. He said that it should not be necessary for MPD to secure a search warrant in order to obtain information that would further their investigation. *Tr.* 8/17/11 at 149. He said that the establishment's stonewalling was akin to obstruction of justice. *Tr.* 8/17/11 at 149.

59. Lt. Fitzgerald also stated that Mr. McLeod's testimony was inconsistent regarding the video footage. *Tr.* 8/17/11 at 150. As a result, Lt. Fitzgerald will not allow his detectives to talk to him without recording the interview. *Tr.* 8/17/11 at 150. He stated

that Mr. McLeod stonewalled MPD and was not forthcoming with the initial video request or the employees' names. *Tr.* 8/17/11 at 150-151. He also said that he found it interesting that Mr. McLeod willingly turned over video evidence in the three other incidents. *Tr.* 8/17/11 at 151. Lt. Fitzgerald is also curious about the timing of the purchase of the new video surveillance system. *Tr.* 8/17/11 at 151.

60. Lt. Fitzgerald does not believe the answer to interior altercations is to push the fight outside and let people beat each other in the street. *Tr.* 8/17/11 at 151-152. He said that patrons are getting hurt and the large fights drain MPD resources. *Tr.* 8/17/11 at 151, 165-166. He understands that security can't always break up fights, but in those instances, the establishment should call 911. *Tr.* 8/17/11 at 154. He said that ABC-licensed establishments operate as though if no one calls 911, then the incident didn't really happen. *Tr.* 8/17/11 at 154. Lt. Fitzgerald is concerned that someone is going to get killed because people have already been seriously hurt. *Tr.* 8/17/11 at 154.

61. Lt. Fitzgerald recommended four officers for a Reimbursable Detail at Lotus. *Tr.* 8/17/11 at 155. The establishment stated that there are four officers assigned to Lotus on Thursday and Friday nights and two officers assigned on Saturday nights. *Tr.* 8/17/11 at 156. Mr. McLeod stated that there is now a camera in the alley and that all of the security personnel who were involved in the melee are no longer employed by Lotus. *Tr.* 8/17/11 at 159, 162.

CONCLUSIONS OF LAW

62. The Board has the authority under D.C. Official Code to hold a Fact Finding Hearing in order to obtain further information from a licensee in response to either (1) a licensing request or (2) an investigation conducted by ABRA. Specifically, pursuant to 23 DCMR §1611.1 the Board may hold a Fact Finding Hearing to obtain further information from a licensee prior to rendering a final decision on an ABRA Investigative Report. Although a licensee shall not be fined, suspended, or revoked at a Fact Finding Hearing, the information provided at a Fact Finding Hearing may result in the issuance of a show cause notice pursuant to §1604 or other enforcement action permitted under the Act or this title.

63. Furthermore, the Board is empowered by statute to impose conditions on ABC-licensees under D.C. Official Code § 25-104(e). Section 25-104(e) gives the Board broad powers to impose conditions on the Licensee if it finds that such conditions are in the best interest of the establishment's community. The Board's powers to impose conditions on the Licensee are not limited by § 1611.2, which, on its face, only prevents the Board from issuing fines, suspensions, or revoking an establishment's license during a Fact Finding Hearing, and nothing more.

64. At the conclusion of the Fact Finding Hearing, the Board, held a closed meeting pursuant to §405 (b)(13) of the Open Meetings Act and now reduces their deliberations to this written Order. The Board takes this opportunity to work with the Licensee to further strengthen public safety measures for the establishment and its patrons.

65. The Board finds, based on the testimony from MPD Lt. William Fitzgerald, ABRA Investigators Mathews, Lawson and Shakoor and the Licensee, that the establishment operates with disregard for public safety, both for its own patrons and also for its staff. As this Board stated in Board Order No. 2011-356³, the Board has long recognized that bar and club owners have a responsibility for ensuring the safety of their customers and themselves. Thus the Board has determined that the Licensee should undertake the additional security measures set forth in the ordering paragraphs below, to ensure the safety and welfare of the members of the public who patronize and work at the establishment.

66. The Board finds that the existence of problems such as public intoxication, noise, disorderly conduct, assaults and other similar problems connected primarily with the routine congregation of persons around such nightclubs, can be attributable to those nightclubs that are managed without adequate attention to preventing these problems. These problems seriously impact the peace, order, health, safety and welfare of District residents, as well as contribute to the deterioration of the neighborhood and quality of life.

67. The Board is disturbed by the investigative reports regarding the recent incidents at Lotus. Most compelling is the testimony from Lt. Fitzgerald and Officer McHugh who testified that the establishment stonewalled and thwarted MPD's investigations on several occasions. Specifically, in Case No. 11-251-00228, for the incident of July 8, 2011, Lt. Fitzgerald stated that the Respondent did not provide MPD videotape of this incident. Additionally worrisome to the Board is the testimony that victims or patrons, rather than club staff or security personnel, seem to be the parties calling 911.

68. MPD's testimony regarding the availability of video footage and who called 911 conflicts with the testimony of the Respondent. The Board however, finds the testimony of the MPD officers to be more credible as the Respondent's testimony is inconsistent even within the hearing record. On the one hand, Mr. McLeod states that 911 wasn't called because MPD was already on the scene and on another hand, he stated that security staff notified 911.

69. The Board is equally alarmed at the conduct of the establishment on the night of July 23, 2011 (Case No. 11-251-00255). The Board finds credible the testimony of Officer McHugh who witnessed over 100 persons outside the establishment, having been ushered out following an altercation inside. Officer McHugh describes the incident as very chaotic and indicated that it took 15 to 20 minutes to get the situation under control.

70. There are also inconsistencies regarding whether the Respondent rendered aid. Here again, the Board finds the testimony of MPD to be more credible. Officer McHugh stated that he and Sgt. Evans personally carried the female victim from the lobby to the waiting ambulance. Mr. McLeod, on behalf of the Respondent, stated that the female victim was escorted out the front door. Unfortunately, the Respondent's version of events cannot be corroborated because the Respondent did not make the front door camera footage available to MPD or ABRA investigators.

³ In the matter of Night and Day Management, LLC, t/a Fur Factory, dated August 17, 2011.

71. One of the more disturbing incidents to the Board was the incident of the large fight that required over 50 MPD officers to bring under control. The need to call in officers from every sector of the Command District, let alone officers from the neighboring Command District is disconcerting to the Board as it jeopardizes MPD's ability to adequately protect other neighborhoods in 1D and throughout the city. The Board is also appalled to learn that members of the Respondent's security team were also involved in the beating and kicking of patrons that night.

72. The Board also finds credible the testimony of Lt. Fitzgerald regarding the establishment's practice of escorting patrons outside the club who continue the fight on the public streets. The Board shares MPD's concern that assaults committed outside, escalate because there is no further action taken by the Licensee to de-escalate matters or contact MPD. The Board finds that this absence of control and notification to law enforcement further weakens public safety and puts departing patrons at greater risk. By throwing fighting patrons outside the establishment, the Licensee merely foists the problem onto the public street and onto the city. The Board finds that the Respondent also exacerbated matters by not calling 911 when persons are fighting or are injured.

73. The Board finds that there was ample testimony from MPD to support the request to impose Reimbursable Detail. Lt. Fitzgerald believes and the Board agrees; that the imposition of MPD Reimbursable Detail will ensure the safety of patrons who are exiting the establishment at closing time or who are being escorted out due to a problem inside the establishment. MPD Reimbursable Detail will also aid MPD in expediting investigations resulting from arrests outside the establishment. The Board also notes that the Respondent has already agreed to undertake some of the additional security measures listed below, such as employing MPD Reimbursable Detail.

74. The Board also cannot emphasize enough the need for the Respondent to cooperate with MPD and ABRA investigators during and following the incident. It is appalling that MPD had to seek a search warrant from the District of Columbia Superior Court in order to obtain the necessary video footage and employee information in order for it to have the tools necessary to conduct its investigation.

75. Lastly, the Board wants the Respondent to clearly understand that it runs the risk of having its license suspended or worse, revoked, because of public safety concerns. As a result of this Fact Finding Hearing, the Respondent is now on notice and is encouraged to work with the Metropolitan Police Department and ABRA's Enforcement Division to address and remedy public safety concerns.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record herein, the Board does hereby on this 5th day of October, 2011, **ORDER** that the Respondent, Inner Circle 1420, t/a Lotus, a Retailer's Class CN License located at 1420 K Street, N.W., undertake the following security measures to ensure the safety and welfare of the members of the public who patronize the establishment.

1. Licensee must continue to secure MPD Reimbursable Detail for each night that the Licensee is open to the public for business. For those nights that Reimbursable Detail is required; there must be a minimum of four officers, it must be present for a minimum of four hours and it must remain at the establishment for an additional 30 minutes after closing.
2. Licensee must make its security video footage available to MPD and ABRA investigators immediately upon request at the time of the incident. Furthermore, the Licensee is to have personnel on hand who can adequately operate the camera security system for purposes of downloading and providing copies of the requested footage to MPD and ABRA personnel.
3. Licensee must call 911 at the time of any incident or altercation inside the establishment that leads to ejection of the patrons by the establishment's staff or security. Additionally, the Licensee must call 911 anytime the commission of a crime is observed, anyone is in obvious need of emergency medical assistance or anyone claims injury and requests emergency medical assistance.
4. Licensee will cooperate completely and timely with regard to any and all requests made by MPD and ABRA investigators.
5. Licensee will complete the conversion of its camera surveillance system to infrared capabilities as it represented to Investigator Lawson in the Supplemental Investigative Report No. 11-251-00204(a) within 60 days of the Board's Order.

The Board further **ORDERS** that:

6. If the Licensee hasn't already, as promised at the time of the Fact Finding Hearing, it will produce the missing video footage from the incident in Case No. 11-251-00255, showing the injured female patron being escorted out of the establishment through the front door. The Board will leave open a final determination on this matter until the footage can be reviewed by an ABRA investigator.
7. That Case Nos. 11-251-00257, 11-251-00216, 11-251-00204 be sent to the Office of the Attorney General for a determination of Show Cause.

Copies of this Order shall be sent to the Licensee and the Metropolitan Police Department.

District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.